95

Supreme Court, U.S.
FILED

071573 APR 8 - 2008

OFFICE OF THE CLERK

NO. (1)

In The

Supreme Court of the United States

Ceola James
Petitioner

v.

The Mississippi Bar
Respondent

On Petition for a Writ of Certiorari
To the Mississippi Supreme Court

Petition for a Writ of Certiorari

Ceola James
Attorney at Law
P.O. Box 1465
Vicksburg, MS 39181

(601) 636-5562

QUESTIONS PRESENTED FOR REVIEW

(1) Whether petitioner was denied equal protection and due process of the laws when Petitioner was ordered by the Mississippi Supreme Court to receive a public reprimand for appealing a removal petition while counsel for opposing party was allowed to appeal his removal petition without being given a public reprimand where court ruled that opposing counsel should have been removed.?

(2) Where the State of Mississippi adopts the ABA Rules of Professional Conduct and announces a new rule on appeal, should petitioner be punished retroactively under a new rule announced by the Mississippi Supreme Court?

TABLE OF CONTENTS

PAGE

Questions presented for Review ----------i

Table of Authorities----------1v

Opinion Below---------- 1

Statement of Jurisdiction----------1

Constitutional Provisions----------2

Statement of the Case----------3

REASONS FOR GRANTING THE WRIT------ 1,8,9,10

I. The state court of last resort has made a ruling that does not afford equal protection and due process . This decision was made in a manner that conflicts with decisions of other state courts of last resort and also with relevant decisions of this court.

2. Review is also warranted because the issue of an attorney being cited for disciplinary action for appealing for permission to represent an indigent child is a matter of broad public importance that has not been but should be

settled by this court. The denial of the right to appeal a removal petition without becoming a test case for a bar complaint has caused and will cause further **loss of faith in the judicial system. According to legal experts, Petitioner has suffered abuse as much as the child she was trying to protect.**

CONCLUSION ---------- 15

INDEX TO APPENDIX

1. COMPANION CASE ----------1a

2. Constitutional Provisions ---------- 30a

3. Judgment on Appeal ---------- 37a

4. Order ---------- 54a

5. Final Order ---------- 55a

6. Order Denying Rule 60 Motion 56a

TABLE OF AUTHORITIES

UNITED STATES CODE

(1) 18 U.S. C., Section 207 (a (1) ---------- 12
(2) 28 U.S.C. Section 1254 (1) ---------- 1

Federal Rules

Due Process Clause, U. S. Constitution ------ 1,2,16
Equal Protection Clause, U.S. Const. ---------- 2,9,16

Durham County vs. Richards and ----------12
Associates, Inc. 742 F. 2d, 81,
4th cir. 1994 ---------- 12

J.N.W. E. v, W. D. W.
2005 So. 2d (2004-CA 00166-COA) ----------,6,10

Miss. Comm. On Judicial Performance
vs. Atkinson, 654 So 2d 1339 (Miss.,
1994) ----------10,11

Schultz vs. Schultz
783 So. 2d 324
Fla. App.Ct.,2001 ---------- 11

Rules

ABA Model Rules of Prof. Conduct 1.12 ---2,11,12,15

Miss. Rules of Prof. Cond. 1.12 ----------4,11
Miss. Rules of Civil Procedure ----------1, 56a

Internet

'Letric Law Library - The Internet Library -- 2, 3,13

OPINION BELOW

This case comes up on Application for a Writ of Certiorari on a order Denying a Rule 60 Motion, Mississippi Rules of Civil Procedure, which was entered on January 11, 2008. A Final Order was entered in this case on July 28, 2005. The opinion is printed as a part of the Appendix. Other Orders are also listed in the Appendix. An Order denying the Rehearing was entered on April 5, 2005. An Order Denying the Motion to Amend or Correct the Judgment was entered on May 2, 2007.

STATEMENT OF JURISDICTION: An Order was entered in this cause on the 5th day of April, 2007 by the Mississippi Supreme Court denying the Motion for Rehearing. An Order denying the Rule 60 Motion, MRCP, was entered on January 11, 2008. Jurisdiction is invoked pursuant to 28 U.S.C., Section 1254 (1), which provides a writ of certiorari may be granted upon petition by any party to any civil or criminal case before or after judgment.

CONSTITUTIONAL PROVISIONS: The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no state shall... deny to any person within its jurisdiction the equal protection of its laws." The United States has a written commitment that the judiciary is

empowered to enforce if the states do not comply. The fourteenth Amendment guarantees all persons "equal protection of the laws," which means that a state should apply laws equally and cannot give preference to person or class of persons over another. 'Lectric Law Library. Appellant and co-counsel in the case on appeal both appealed removal petitions. Appellant, who appealed to represent an indigent child, was dismissed and cited with a bar complaint for appealing. Appellant never presided over the case she was asked to modify. Co-counsel, who represented the side with money was not dismissed or cited, even though co-counsel presided over the case he was asked to modify. Both counsels were prior chancery judges. Appellant is only asking this court to clear her name based on the law that the state of Mississippi had adopted pursuant to ABA Model Rules of Professional Conduct 1.12.

Due process is guaranteed by the Fifth Amendment to the U.S. constitution. Due process insures that a person is guaranteed both fundamental and substantive due process. Due process is an issue in this case because "substantial" interwined as adopted by the court is a subjective test that raises due process issues because the concept is too vague to give proper notice of what the court expects. Due process insures that a person is afforded fundamental justice and fairness. 'Lectric Law Library.

STATEMENT OF THE CASE. The basis for requesting an Application for a Writ of Certiorari is that the Appellant never presided over the divorce she was asked to modify. The court basically ruled that a protective order that was done in 2001 when the Petitioner was a Chancery Judge seated in Greenville Washington County, Mississippi presented issues that were "interwined" with the divorce action in Yazoo City, Mississippi. The Order for Protection From Domestic Abuse that was done in 2001 basically ordered the parties to keep their agreement that was done in 2000, and take it to their Judge in Yazoo City for a resolution on the merits. The Yazoo Chancellor dismissed the agreement as insignificant prior to the divorce and it was not a part of the divorce. The parties were fighting over the agreement in Washington County, Mississippi where the Petitioner presided. Since no other judge would take the case on the evening of November 21, 2001, prior to thanksgiving holidays, Appellant answered the call of duty and agreed to have an emergency hearing granting temporary relief.

One of the parties was later referred to the Petitioner to do a modification of the divorce decree, and the Appellant basically walked into a "hornet's nest." The former clients insisted that a cross removal petition be filed against the former attorney, Derek Parker. because their previous Attorney Shari Herring, had accused Attorney

Parker of ruling on the visitation of the minor child in question while acting as a special youth court judge, and at the same time representing the child in youth court and in chancery court concerning the matter in controversy. The prior Attorney, Shari Herring, was unable to resolve the conflict and she resigned from the case.

The Yazoo Chancellor, Judge Janace Goree, cited the Appellant with a violation of 1.12 of the Mississippi Rules of Professional Conduct, even though the Chancery Court has no jurisdiction over bar complaints. Attorney Parker admitted that "there was no law to guide him," but nevertheless the Appellant was dismissed and cited. Attorney Parker was not cited or removed by the lower court (for violation of Rule 1.12, Mississippi Rule of Professional conduct), and both parties appealed the removal petitions.

The case involving the removal petitions was assigned to the Mississippi Court of Appeals. Petitioners should have been able to appeal a removal petition without being cited for a bar complaint. The Mississippi Court of Appeals refused to reinstate the Appellant, but ruled that the lower court should have dismissed Attorney Parker from the case. Both attorneys could have represented their clients, but Attorney Parker refused discuss a waiver. He thereby eliminated himself from the case. After the appeal, both

attorneys withdrew from the case, and the petitioner had to **fight a bar complaint that was filed in 2004 during the week prior to petitioner's Supreme Court election**. Petitioner was a candidate for the Mississippi Supreme Court for a seat that had been vacated by a prior justice. The Mississippi Supreme Court had asked the Mississippi Bar to investigate the matter for a possible violation.

Petitioner did what she felt she was ethically obligated to do. Appellant filed a **Petition for Extraordinary Relief** with the Mississippi Supreme Court, basically asking for help, and telling the court that unless it intervened, the minor child would not be heard because every attorney that has attempted to help the child had suffered legal abuse. The legal abuse that the Petitioner suffered in Yazoo City, Mississippi, is too long to be enumerated. Petitioner told the court that the bar complaint was designed to "run the petitioner off," the same as the last attorney had been run off. Petitioner was worried because based on the legal abuse that petitioner had to suffer, petitioner feared that the minor child would be left "spinning in the system." The appellant wanted to insure a fair hearing on the removal petitions. The Emergency Petition for Relief was denied without comment. The Petitioner had asked the Mississippi supreme Court not to impose sanctions for appealing the removal petition. The court ordered the petitioner to receive a public.

reprimand for appealing the removal petition. In the dissenting opinion, a ninety day suspension was recommended. Petitioner had a legitimate question for appeal since petitioner never presided over the divorce. Appealing a removal petition is the proper procedure for addressing a removal. If petitioner had presided over the divorce that petitioner was asked to modify, Petitioner would have immediately withdrawn from the case.

The case **of J.N.W.E.** v. **W. D.W.** (Appendix, p. 1). is still being litigated, and the minor child is still "spinning in the legal system." Petitioner received numerous letters of support from laymen and attorneys, which included these statements:

(1) " The actions that Ms James took were not motivated by any ill motive or conscious disregard of any ethical rules of consideration but solely out of a desire to do the right thing and be of assistance to a child she felt in need of same. " Attorney David Sessums, Vicksburg.

(2) " Ms. James is a fine, caring, and capable attorney and would prefer to personally suffer than cause injury to others... I wish more could share her strong will and excellent attitude in the face of adversity." Attorney Mark Prewitt, Vicksburg.

(3) " Ceola James is..honest, hard-working ...and caring for people, and a very good attorney."" W.B. Duggins, Vicksburg.

(4) "Ceola has always been courteous, compassionate, fair, and competent in her services to the community as Chancellor of the Ninth District and in her capacity as a practicing attorney." Attorney Marcie T. Southerland, Vicksburg.

(5) "I asked you to keep in mind that as a lawyer and judge, our reputations are about all we have." G. Kenner Ellis, Attorney, Greenville.

(6) "In my opinion, she would never knowingly or intentionally act unethically or contrary to law." Marian D. Alexander, Attorney, Greenville.

(7) "Ceola James has a passion for protecting children more than any Chancellor before whom I practiced in my thirty-four (34) years." Willard Mcillwain, Jr., Attorney, Greenville.

(8) "Ceola James has helped more people than any other attorney I know...She is ethical and respects the law." Stacy D. Carter, student - Vicksburg.

(9) " Hon. Ceola James deserves respect and admiration, not public humiliation and disrespect."

Lea Donovan, former Deputy Chancery Clerk, Vicksburg.

(9) " who truly deserves this public reprimand? Would it be the opposing attorney who admitted his act...the Judge (Goree) who allowed the tortue to continue,,,for four years...or the attorney who fought to save a child from tortue...?She suffered abuse while trying to protect him, such as being called a "stupid Nigger." This she never thought twice about...all she wanted to do was save one little boy..."You should be proud to have among you an attorney who would go against these types of abuse to save one little child instead of adding more abuse and persecution on top of what she has already received." Dorothy Franklin, relative of former client.

"Giving a public reprimand to a person..who was appealing ... to clear the way to represent a child sends the wrong message to the public." Murline Lee, citizen, Vicksburg.

"The problem with her being reprimanded I believe must be a communication breakdown that needs further investigation." Robert White, Vicksburg.

REASON FOR GRANTING THE WRIT:

1. THE STATE COURT OF LAST RESORT HAS MADE A RULING THAT DOES NOT AFFORD EQUAL PROTECTION AND DUE PROCESS IN A MANNER THAT CONFLICTS WITH DECISIONS OF OTHER STATE COURTS OF LAST RESORT AND WITH RELEVANT DECISIONS OF THIS COURT.

Petitioner was denied equal protection and due process of the laws when Petitioner was ordered by the Mississippi Supreme Court to receive a public reprimand for appealing a removal petition while counsel for opposing party was allowed to appeal his removal petition without being given a public reprimand where court ruled that opposing counsel should have been removed? The Equal protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no state shall... deny to any person within its jurisdiction the equal protection of its laws" Due process is guaranteed by the Fifth Amendment to the U. S. Constitution. It insures that a person is afforded fundamental fairness. Due process is an issue in this case because the "sustantial" interwined standard adopted by the court is too vague to be constitutional because it does not give an attorney or former judge proper notice of what the court expects. Petitioner is asking the court to clear her name because her name is mostly all she has. The petitioner was forced to fight a bar complaint after she filed a removal petition. The case of **Ceola James vs The Mississippi Bar** which is on

appeal involves a bar complaint. The Mississippi Supreme Court has exclusive jurisdiction over bar complaints. The Yazoo City Chancery Judge along with the Mississippi Court of Appeals entertained the subject matter of the bar complaint even though theses courts had no jurisdiction over bar complaints. In the case of **J.N.W. E. vs. W.D.W.**, 2005 So. 2d (2004-CA-00166-COA): neither attorney was allowed to represent their clients. See Appendix. The Mississippi Court of Appeals ruled that Attorney Derek Parker should have been removed. Attorney Parker withdrew from the case after the appeal of the removal petition. Attorney Parker alleged that a custody proceeding was done in another jurisdiction by the Petitioner, when in fact custody was never mentioned in the Petition for Protection from domestic abuse. Petitioner explained to the parties that she had nothing to do with the merits of their agreement, and that they abide by their agreement and take it to their judge for any adjustment on the merits. Attorney Parker has confused the facts of the case. His version of the facts was adopted by the courts and is contrary to the evidence presented by the this had to be addressed by their judge on the merits. the parties were merely ordered to continue to abideby their agreement. In addition to being wrongfully removed in **J.N.W.E. vs. W.D.W.**, the petitioner was also cited with a bar complaint in, **Ceola James vs. The Mississippi Bar.** The way that petitioner has been treated for appealing to be able to help a

child has done much to damage the image of the legal profession and this case has sent the wrong message to the public.

2. THE ISSUE OF AN ATTORNEY BEING CITED FOR DISCIPLINARY ACTION FOR APPEALING FOR PERMISSION TO REPRESENT AN INDIGENT CHILD IS A MATTER OF BROAD PUBLIC IMPORTANCE THAT HAS NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT. THE DENIAL OF THE RIGHT TO APPEAL A REMOVAL PETITION WITHOUT BECOMING A TEST CASE FOR A BAR COMPLAINT HAS CAUSED AND WILL FURTHER CAUSE LOSS OF FAITH IN THE JUDICIAL SYSTEM IF THE ISSUE IS NOT SETTLED BY THIS COURT.

Where the State of Mississippi adopts the ABA Rules of Professional Conduct (adopted 2/18/1987) and announces a new rule on appeal, the Petitioner should not be punished retroactively under the new rule. Mississippi adopted the ABA Model Rules of Professional Conduct. In the comments to Rule 1.12 of the ABA Model Rules of Professional Conduct, Annotated, the case of **Schultz vs, Schulth** is cited, 783 So. 2d 324 (Florida District court of Appeals, 2001) The cases used in this petition were cited as authority or persuasive authority in the courts below. This case held that there is no violation when it is not the same parties and the same subject matter. The Mississippi Rules of Professional Conduct, Rule 1.12 also require that

the same parties and the same subject matter be present. The ruling in **Ceola James vs. The Mississippi Bar** has basically nullified this decision. Also cited under the ABA Model Rule 1.12 is

Durham County v Richards and associates, Inc., 742 F. 2d 811. 4th cir., 1994. In the Schultz case, supra the court held that the trial court abused its discretion by disqualifying wife's counsel in a divorce solely because the retired partner in counsel's firm was appointed arbitrator in shareholder suit against husband and his company, different matters involved). Rule 1.12 MRPC requires that an attorney shall not represent a party in a case where the attorney, as a former judge, participated **personally** and **substantially**. In the comments to the ABA Model Rules of Professional conduct, Annotated, it is stated that personal and substantial refers to any participation on the merits. as is set forth in 18 U.S.C., Section 207 (a) (1). there is no violation when it is not the same parties and the same subject matter. The same subject matter really means the same set of facts and the same case. The agreement that was the subject of the temporary order for protection from domestic abuse had nothing to do with the divorce that the petitioner was asked to modify. The abuse that was the subject of the modification arose in the youth court where Attorney Parker

presided and it was the underlying cause of the modification. The abuse that was the subject of the parties' agreement was two years old when the parties were fighting over their agreement in Washington county. It never had anything to do with the divorce. The temporary order was to preserve the peace in Washington county. A close observation of the facts and the record in the case will show that Attorney Parker presided over the same parties and subject as judge and lawyer and at the same time caused a complaint to be filed against the petitioner when in fact he was the party committing the acts as it was alleged by the previous attorney. Petitioner has no interest in Attorney Parker's case, but petitioner merely wants to clear her name. Petitioner's name is all she has.

Jurisdiction is the power of a court to hear a case. The geographical area within the judge's district is called territorial jurisdiction. Jurisdiction in some cases is exclusive as opposed to being concurrent or assistant. "Jurisdiction" 'lectric Law Library of Legal Terms. The Internet Library.It is undisputed that the Yazoo chancellor, Goree, had exclusive jurisdiction over the divorce. The petitioner had no jurisdiction over the divorce. Petitioner was in another territorial jurisdiction. The record below shows that the petitioner made a ruling to preserve the peace in another district until the litigants could be heard by their judge. The hearing on the merits of their dispute was a

different matter. Even if had been the same subject matted, it was a collateral ruling to preserve the peace and not an order affecting the merits, Since petitioner had no jurisdiction over the divorce, petitioner had no power to do anything affecting the merits of the divorce.

The Mississippi Supreme Court cited **Mississippi Commission on Judicial Performance** vs. **Atkinson**, 654 So. 2d. 1334 (Miss, 1994) in ordering a public reprimand for the petitioner. In the Atkinson case, the Judge set a bond and later went back to lower the same bond. Attorney Atkinson was given a public reprimand. Attorney Atkinson entered an order that affected the merits of the case, even thought it was an agreed order. This case is distinguished from the petitioner's case in that the petitioner had no power to do anything to affect the merits of the divorce she was asked to modify.

LOWER COURT'S JUDICIAL NOTICE OF THE PARTIES:

The lower court had the following judicial notice of the parties which may aid this court in understanding the nature of this case. Petitioner is african american, and does much work to represent the poor. Petitioner did not charge the former clients for the appeal of the removal petition. The former client had lost two houses trying to pay attorneys. Attorney Derek Parker is

White and W.D.W. is white with money. Petitioner's former client, J.N.W.E. is white and visibly poor. Judge Janace Goree is african american. The petitioner told the lower court that this case was really about **rich vs poor**, a poor child spinning in the legal system trying to be heard. The child is still spinning trying to be heard.

LOWER COURT'S NOTICE OF CONSTITUTIONAL PROVISIONS:

In the lower court, petitoner asked the court reconsider its ruling because of the due process and equal protection issues that the ruling had caused. Petitioner reminded the court that the substantial participation test as announced by A.B.A. Rule 1.12 is an objective standard, but the interwined test as announced by the Mississippi Supreme court is too vague to be constitutional. Interwined is whatever the judge says it is. In the Mississippi Supreme Court, the bar complaint was tried *de novo. There was no response to the issue.*

CONCLUSION:

Petitioner prays that this **court will grant the application or request for a Writ of Certiorari.** Petitioner has worked long, hard, and diligently for her reputation, her city, county, and the state of

Mississippi. Petitioner would like to be afforded due process and equal protection by the state of Mississippi, and petitioner would like to be able to enjoy the benefits as well as the burdens of the profession, and of the legal work that petitioner does, which includes representing the poor, and running in elections without political reprisals by various political groups..

Petitioner also requests that the **record of the lower court will be reversed and that petitioner's record will be expunged.**

Respectfully submitted,

/S/_____

Ceola James
Attorney at Law, Pro Se

CEOLA JAMES
ATTORNEY AT LAW, PRO SE
P.O. BOX 1465
VICKSBURG, MS. 39181

(601) 636- 5562